

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 25 OF 2000

APPELLANT :- Bombay Municipal Corporation,
(Ori. Complainant) having its office at Mahapalika Marg,
Mumbai-400 001.

...VERSUS...

RESPONDENTS :- (1) R.C. Vedak,
at Nyayamandir Building,
Bhoiwada, Mumbai-14.

(2) Sham D. Shetty
Canteen at Nyayamandir Building,
Bhoiwada, Mumbai-14.

(3) State of Maharashtra,

None for the Appellant.
Mrs. G.P. Mulekar, APP, for the Respondent/State.

CORAM : S.B. Shukre, J.

DATED : 22nd June, 2015.

ORAL JUDGMENT :

This is an appeal preferred against the judgment and order dated 05.8.1999 delivered in Criminal Case No. 868/MH/99

by Metropolitan Magistrate, 41st Court, Shindewadi, Dadar, Mumbai, thereby acquitting respondents 1 and 2 of the offence punishable under Section 394(1)(e)(i) of Bombay Municipal Corporation Act (for short B.M.C. Act).

2. Briefly stated, facts of the case are as under :

(i) Respondent no.1, at the time when the incident took place, i.e. on 24.11.1998, was the President of the Bar Association and respondent no. 2 was the owner of the canteen allegedly run by him within the premises of Metropolitan Court Building, Bhoiwada, Mumbai.

(ii) On 24.11.1998, at about 1-30 p.m., Mr. Mahadev Laxman Kamble, Medical Assistant of respondent, paid visit to the Court building at Bhoiwada, Bombay. He saw that one canteen was being run there by respondent no. 2 with the help of respondent no.1. He called upon respondent no. 2 to produce the licence required for running a canteen. However, respondent no. 2 failed to produce the licence as required under Section 394(1)(e)(i) read with part 4 of the Schedule of B.M.C. Act. Therefore, the appellant filed a complaint against respondents 1 and 2 in the concerned Court for initiating action against these respondents under Section 394 of the B.M.C. Act.

(ii) Charge for an offence punishable under Section 394(1)

(e)(i) of B.M.C. Act was framed against respondents 1 and 2 and as they pleaded not guilty to the same, they were tried in accordance with law. On merits of the case, the learned Magistrate found the offence charged against respondents 1 and 2 was not proved and, therefore, the learned Magistrate by his judgment and order delivered on 5.8.1999 acquitted respondents 1 and 2 of the said offence. Being dissatisfied with the said judgment and order, Bombay Municipal Corporation is before this Court in this appeal.

3. Nobody has appeared on behalf of the Bombay Municipal Corporation and also for respondents 1 and 2. The learned APP is, however, present on behalf of respondent no. 3 and, therefore, I have heard her. I have carefully perused the record of the case and the impugned judgment and order.

4. It is seen that the learned Magistrate has found that the essential requirement of Section 394 (1)(e)(i) r/w Section 471 of B.M.C. Act is that the canteen or the eating house must be run for the preparation of food or supply of food for consumption by public for profit or gain and the appellant/complainant having adduced no evidence whatsoever to show that this essential ingredient of the said Section was fulfilled in this case, the learned Magistrate came to the conclusion that no offence as punishable under Section 394(1)(e)(i) of B.M.C. Act was proved by the appellant against

respondents 1 and 2.

5. The finding so recorded by the learned Magistrate, upon careful consideration of the evidence available on record, cannot be said to be perverse or something based upon some extraneous material or non-consideration of material evidence available on record, inasmuch as it is well settled law that running of canteen for earning profit or gain is a *sine qua non* for making out an offence of running a canteen without licence under Section 294 of B.M.C. Act. The witness examined on behalf of the complainant, P.W.1 Kamble, has admitted that the canteen in question was being run only for Advocates and Court staff and that he had no idea as to whether or not the canteen was run for gain or profit. With such evidence available on record, I do not think that even another view was possible in this case. Even otherwise, while exercising jurisdiction under Sections 378 of Code of Criminal Procedure in an appeal against acquittal, it is not open to the appellate Court to interfere with the finding of innocence recorded by the trial Court only because two views are possible and the appellate Court takes another view than the view taken by the trial Court. In order to upset the findings of the trial Court in such an appeal, it must be shown that the appreciation of evidence was so perverse that the view taken or the conclusion reached by the trial Court was not logically possible. Such not being the case here, no interference with the impugned judgment and order is called for.

The appeal deserves to be dismissed.

6. The appeal stands dismissed.

JUDGE

/TA/